

ESTTA Tracking number: **ESTTA594509**

Filing date: **03/25/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203277
Party	Defendant Palm Beach Motoring Accessories, Inc.
Correspondence Address	LEO ZUCKER LAW OFFICE OF LEO ZUCKER 2591 DUNNING DRIVE, PO BOX 1177 YORKTOWN HEIGHTS, NY 10598-8177 UNITED STATES lzpatents@gmail.com
Submission	Opposition/Response to Motion
Filer's Name	Leo Zucker
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Date	03/25/2014
Attachments	PBMA Response.pdf(42254 bytes ) Zucker_Declaration.pdf(31096 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
Before the Trademark Trial and Appeal Board

3D International, LLC,	)	
a California Limited Liability Company,	)	
	)	Opposition Nos. <b>91203277 (parent)</b>
Opposer,	)	<b>91203279</b>
	)	
v.	)	Application No. 85-261,047
	)	Mark: AUTOPIA FORUM, in Class 38
Palm Beach Motoring Accessories, Inc.,	)	
a Florida Corporation,	)	Application No. 85-312,684
	)	Mark: AUTOPIAFORUMS, in Class 38
Applicant.	)	

**APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO EXTEND TRIAL DATES**

TO: Trademark Trial & Appeal Board  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

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March 25, 2014

Applicant, Palm Beach Motoring Accessories, Inc. (PBMA), by its undersigned attorney, hereby opposes the motion filed by opposer 3D International, LLC (3D) on March 19, 2014, to extend trial dates. Annexed to and forming a part of the present response is a Declaration by Leo Zucker under 37 C.F.R. § 2.20.

### FACTUAL BACKGROUND

The present trial schedule was set by the Board on February 3, 2014, and is shown at the bottom of page 1 of 3D's motion. As plaintiff, 3D's pretrial disclosures are due April 11, 2014, and 3D now asks the Board to extend all of the scheduled trial dates by 30 days. In the last paragraph at page 4 of the motion, however, 3D requests the Board to "reset *discovery* and trial dates . . . by one month" notwithstanding that discovery closed on January 26, 2014 (emphasis added).

In an unsworn Statement of Facts at pages 2-4 of the motion, 3D's counsel announces his travel reservations for the first time. He claims the reservations were made "nearly a year ago," and that he will be taking "a well deserved vacation" and be unavailable from March 21 to April 15, 2014. No further details concerning the alleged reservations, plane flights, and/or accommodations are provided by exhibit or otherwise. Further, 3D's counsel has not designated any other attorney who can act on behalf of 3D while he is on vacation and remains unavailable for more than three

weeks.

3D's counsel states the reason for the requested extension is to allow him enough time to resolve certain issues he perceives concerning PBMA's responses to 205 requests for admission that 3D served on PBMA *one day* before discovery closed on January 26. See 3D's motion, top of page 2, where portions of certain objections raised by PBMA are quoted, but the admission requests to which the objections are made are omitted. PBMA's responses to all 205 requests were received by 3D's counsel on or about March 8, *without* PBMA having to ask for any extension. Yet, at the bottom of page 2 of 3D's motion, counsel claims that he had "many things to do before traveling, and [could not] get to a through review" of PBMA's responses. See the accompanying Zucker Declaration, at pars. 8 and 9.

## ARGUMENT

As instructed at TBMP § 509.01(a), "[a] motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient," *citing SFW Licensing Corp. v. Di Pardo Packing, Ltd.*, 60 USPQ2d 1372, 1373 (TTAB 2001). The movant has no right to assume that an extension of time will always be granted, *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 205 USPQ 888, 891 (CCPA 1980), and the

mere existence of a pre-planned travel schedule is not sufficient basis for an extension.

*Luemme, Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760-61 (TTAB 1999).

In the present case, 3D's counsel wants an extension because he booked travel tickets and accommodations long ago for a vacation lasting over three weeks from March 21 to April 15, 2014, and he claims to need more time to review PBMA's responses to 205 requests for admissions that 3D served one day before the close of discovery. Yet, 3D's counsel withheld disclosing his long-planned absence either to the Board or to opposing counsel until March 15, 2014, and took no steps early on and well before departing on March 21 to ensure that 3D's representation would proceed without interruption. In addition, as set out in the accompanying declaration, the conduct of 3D's counsel during discovery did not reflect a strong desire to proceed expeditiously to a final resolution on the merits of these oppositions. As stated in *SFW Licensing Corp., supra*:

"Understood in this context, counsel's dilatory request . . . can be seen as nothing but an attempt at delay, rather than a good faith effort to advance the merits of this matter or otherwise appropriately represent the interests of his clients."  
60 USPQ2d at 1373.

Since 3D's counsel filed the present motion knowing that any decision would likely be rendered only *after* his departure on vacation, 3D's counsel must have assumed the motion would be granted automatically. But "[a]n attorney has no right to

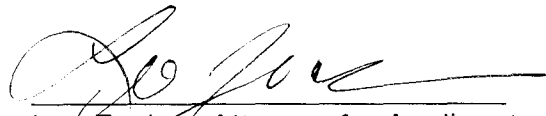
assume that extensions of time will always be granted automatically, which, it appears, is what the attorney for [3D] has assumed here." *Chesebrough-Pond's, supra*, 205 USPQ at 891.

Moreover, it was 3D, and not PBMA, who brought the present consolidated proceedings in the first instance. Therefore, 3D bears a continuing burden of going forward in a timely manner. Neither the Board nor PBMA should have to remain idle just for the convenience of 3D's counsel as he enjoys his vacation and leaves 3D unrepresented for more three weeks, particularly at this stage of the proceedings. *Luemme, supra*, 52 USPQ2d at 1761.

### CONCLUSION

In view of all the foregoing, 3D has not set forth with particularity such facts as would constitute good cause for the requested extension, and 3D's motion to extend the present trial dates should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Leo Zucker', written over a horizontal line.

Leo Zucker, Attorney for Applicant  
Palm Beach Motoring Accessories, Inc.

Telephone: (914) 302-2460

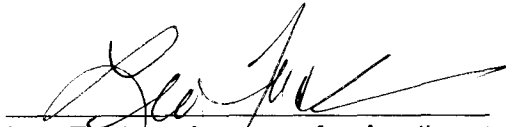
March 27, 2014

CERTIFICATE OF SERVICE

I hereby certify that the within APPLICANT'S RESPONSE TO  
OPPOSER'S MOTION TO EXTEND TRIAL DATES together with a supporting  
Declaration of Leo Zucker Under 37 C.F.R. § 2.20, were served upon Opposer 3D  
International, LLC by depositing same with the U.S. Postal Service as first class mail in  
a sealed envelope, postage prepaid, and addressed to:

Thomas W. Cook, Esq.,  
Thomas Cook Intellectual Properties  
3030 Bridgeway, Suite 425  
Sausalito, CA 94965

on March 25, 2014.

  
Leo Zucker, Attorney for Applicant  
Palm Beach Motoring Accessories, Inc.

Dated: March 25, 2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Trademark Trial and Appeal Board

3D International, LLC, )  
a California Limited Liability Company, )

Opposer, )

V.

Palm Beach Motoring Accessories, Inc., )  
a Florida Corporation, )

Applicant. )

Opposition Nos. **91203277** (parent)  
**91203279**

Application No. 85-261,047  
Mark: AUTOPIA FORUM, in Class 38

Application No. 85-312,684  
Mark: AUTOPIAforums, in Class 38

## DECLARATION OF LEO ZUCKER UNDER 37 C.F.R. § 2.20

TO: Trademark Trial & Appeal Board  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

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March 25, 2014

LEO ZUCKER hereby deposes and states as follows:

1. I am over 18 years of age, and I have personal knowledge of all matters set forth below.
2. I am an attorney at law, admitted to practice in the Courts of the State of New York and before the United States Patent and Trademark Office. I represent the applicant Palm Beach Motoring Accessories, Inc. (PBMA) in the present opposition proceedings.
3. I make this declaration in support of PBMA's present response to opposer's (3D's) motion filed March 19, 2014, to extend the present trial dates set by the Board on February 3, 2014.
4. On January 25, 2014, *i.e.*, *one day* before the close of discovery in these proceedings, 3D served "Opposer's Requests for Admissions [Nos. 183 to 387], Set Three," on PBMA by first class U.S. mail addressed to me as PBMA's attorney. I received the requests on February 3, and I promptly forwarded them to PBMA.

5. Because of the unusually large number of requests, employees at PBMA and I worked together for extended hours to ensure a proper response was made to each of the 205 requests under the applicable rules. As a result, all of the responses were completed and then served on 3D on March 3, 2014, without the benefit of an extension of time to do so.

6. I note as background that 3D had served a first set of 162 requests for admission on PBMA on August 10, 2012, along with a first set of 18 interrogatories, and 12 document requests. Before PBMA responded to the first set of 3D's discovery, 3D served a second set of 20 additional admission requests on October 3, 2012, with more interrogatories and document requests. Employees at PBMA and I then spent much time to consult and to respond properly to both sets of 3D's discovery including all 182 admission requests, and 3D took no further action with respect to the responses.

7. Further, in response to a request by PBMA served December 10, 2013, on 3D for the production of certain documents, 3D responded with a stack of over 200 loose pages without any index or guide, making it impossible for PBMA to determine with certainty which pages were meant to be responsive to each document request. PBMA moved to compel 3D to provide such an index, and, on February 3, 2014, the Board ordered both counsel initially to attempt a resolution by telephone. I conferred by phone with 3D's counsel and was promised a document index by early in

the week of February 17. Only after I reminded 3D's counsel on February 21 did he eventually serve an index by U.S. mail on February 25.

8. In 3D's present motion to extend the trial dates, and within an unsworn Statement of Facts, 3D's counsel alleges he "recently received discovery responses from Applicant's counsel" (motion at page 2, line 1), but he does not specify a date. Allowing five days for delivery via first class mail, PBMA's responses to 3D's third set of admission requests were likely received by 3D's counsel not later than March 8, 2014.

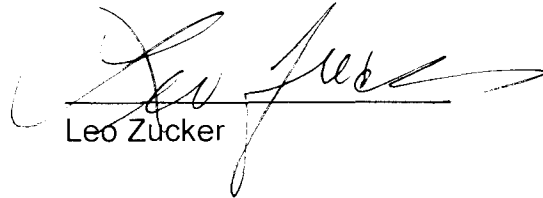
9. Because the present date of April 11 for 3D's pretrial disclosures was set in the Board's decision of February 3, 2014, 3D's counsel knew upon receiving PBMA's responses around March 8 that he had nearly two weeks to review and resolve with me any perceived issues with the responses, before he departed on March 21.

10. 3D's counsel did not identify any other attorney with authority to act on behalf of 3D in these proceedings while he remains unavailable for more than three weeks beginning March 21.

11. I further declare that all statements made of my own knowledge are true, and all statements made on information and belief are believed to be true, and that I have been warned that willful false statements and the like are punishable by fine

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91/203,279

or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the opposed applications or documents or any registrations resulting therefrom.



Leo Zucker

Dated: March 25, 2014